

KSV/ **6821** /2017

16th October, 2017

Shivam Megastructures Private Limited,
218, Prem Baug,
1st Floor, Sir Balchandra Road,
Matunga (C.R.),
Mumbai – 400 019.

Opinion on Title

Dear Sirs,

Re: All that piece and parcel of Slum land, bearing, CTS No. 163A (part) admeasuring 34,390.69 sq. mts. or thereabouts of Village Akurli Taluka Borivali situate, lying and being at Akurli Road, Hanuman Nagar, Kandivali (East), Mumbai – 400 101.

1. It appears that originally the State Government of Maharashtra was seized and possessed of and otherwise well and sufficiently entitled to a large piece and parcel of land and ground admeasuring 6,07,898.9 square metres (as per P.R. Card) and bearing CTS No. 163/A, Village Akurli, Taluka Borivali, District Mumbai Suburban, hereinafter referred to as “**the Larger Property**” and as more particularly described in the **First Schedule** hereunder written.
2. Vide an Order dated 17th July, 1991, and bearing Reference No. 69-77/3C/D-114, the State Government of Maharashtra gave its consent for transferring *inter alia* the Larger Property in favour of the Maharashtra Housing and Area Development Authority (“**MHADA**”).
3. It appears that the Larger Property was encroached upon by various slum dwellers/occupants. Some of the slum dwellers/occupants had come together to constitute 8 (eight) diverse (proposed) societies, viz. (1) Shree Safalya Shejaar Samitee Co-operative Housing Society, (2) Shree Saikrupa Shejaar Samitee Co-operative Housing Society, (3) Sagar Shejaar Samitee Co-operative Housing Society, (4) Prabhat Co-operative Housing Society, (5) Dattakrupa Co-operative Housing Society, (6) Utkarsha Co-operative Housing Society. (7) Pathan Chawl Co-operative Housing Society and (8) Shree Sai Darshan Ganga Darshan Co-operative Housing Society.

4. One M/s. Shivam Developers, a partnership firm registered under the Indian Partnership Act, 1932, (hereinafter referred to as “**the Developer**”) commenced negotiations with the hutments dwellers/occupants of the Society Nos. (1) to (7) above and pursuant thereto obtained consent for development from the hutments dwellers/occupants of the said 7 (seven) societies.
5. By and under 7(seven) diverse Development Agreements, entered into with the aforesaid Society Nos. (1) to (7) above, the Developer acquired the development rights in respect of a portion of the Larger Property admeasuring 28,779.99 sq. mts., under occupation of the members of (1) Shree Safalya Shejaar Samitee Co-operative Housing Society, (2) Shree Saikrupa Shejaar Samitee Co-operative Housing Society, (3) Sagar Shejaar Samitee Co-operative Housing Society, (4) Prabhat Co-operative Housing Society, (5) Dattakrupa Co-operative Housing Society, (6) Utkarsha Co-operative Housing Society and (7) Pathan Chawl Co-operative Housing Society.
6. The Developer thereafter submitted a proposal for a Slum Rehabilitation Scheme under Regulation 33(10) of the Development Control Regulations, 1991 in respect of the said portion of the Larger Property admeasuring 28,779.99 sq. mts., under occupation of the members of the aforesaid 7(Seven) societies.
7. The Slum Rehabilitation Authority (“**SRA**”) issued a Letter of Intent (“**Old LOI**”) dated 18th May, 2009, bearing No. SRA/ENG/1395/RS/MHL/LOI in favour of the Developer, for the Slum Rehabilitation scheme for the sanctioned FSI of 2.76 subject to the terms and conditions specified therein. The property admeasuring 28,779.99 sq. mts., covered under the Old LOI is hereinafter referred to as the Old LOI Property.
8. A portion of the Old LOI Property, admeasuring 7,708.50 sq. mts., under use and occupation of the members of Shri Sagar Shejjar Samitee Co-operative Housing Society and a part thereof under use and occupation of members of Shri Saikrupa Shejjar Samitee Co-operative Housing Society, as more particularly described in the **Second Schedule** hereunder written (hereinafter referred to as “**the said Free sale Land**”) was earmarked by the Developer for development of the free sale component of their proposed project.
9. Another portion of the Old LOI Property admeasuring 5933.96 sq. mts. or thereabouts, under use and occupation of the members of Pathan Chawl Committee Co-operative Housing Society, (“**the said Rehab Land**”) was earmarked by the Developer for the rehabilitation of 969 slum dwellers from a portion of the Old LOI Property.

10. By and under an Agreement for Sub-development dated 29th October, 2010, entered into between the Developer of the One Part and Shivam Megastructures Private Limited (hereinafter referred to as “**Shivam Megastructures**”), of the Other Part and registered with the Sub-registrar of Assurances at Mumbai under Serial No. BDR-16/ 11282 of 2010, the Developer granted /assigned unto Shivam Megastructures, *inter alia*, (i) the development rights in respect of the said Free sale Land; (ii) the right to use the assured FSI to be used on the said Free sale Land; (iii) right to use the entire additional area as may become available in respect of the development of the said Rehab Land; and (iv) the right to sell and/or dispose or allot premises and all additional parking and other spaces to be constructed under the free sale component on the said Free sale Land, at or for the consideration and on the terms and conditions specified therein. Further, under the aforesaid Agreement for Sub-Development, Shivam Megastructures also accepted the responsibility to construct the rehabilitation building on the said Rehab Land. As per Clause 10 of the said Agreement the minimum available FSI for utilization for free sale area on the said Free sale Land will be 3,88,394 sq. ft. or thereabouts.

11. Under the aforesaid Agreement for Sub-development, it was agreed that the Developer would be liable to, *inter alia*, procure all permissions and approvals for the development of that portion of the Old LOI Property and to extend all reasonable co-operation and assistance to the Shivam Megastructures as and when required in respect of development thereof. Further, pursuant to clause 8(e) of the aforesaid Agreement, Shivam Megastructures was entitled to obtain financial assistance from a bank or financial institution against security of premises in the free-sale building to be constructed on the said Free sale Land, after handing over possession of the Rehab Buildings to the Developer.

12. By and under a Development Agreement dated 9th March, 2010 made between Saidarshan Co-operative Housing Society (Proposed), through its office bearers, being the parties of the One Part and the Developer herein, therein also referred to as “the Developer”, of the Other Part, Saidarshan Co-operative Housing Society (Proposed) granted unto the Developer the right to construct building/s on a portion of the Larger Property occupied by its members (“**Saidarshan Property**”), for their rehabilitation together with the right to sell the additional tenements on ‘ownership basis’, in the manner mentioned therein.

13. By and under an Irrevocable Power of Attorney dated 9th March, 2010, the office bearers of Saidarshan Co-operative Housing Society (Proposed), granted various powers and authorities to the Developer, in the manner mentioned therein. A power to amalgamate the Saidarshan Property with any other property or sub-divide the same was also given to the Developer under the aforesaid Power of Attorney.

14. Vide a Consent Letter dated 9th March, 2010 addressed by various hutment dwellers/occupants being members of the Saidarshan Co-operative Housing Society (Proposed) to the Chief Executive Officer, SRA, the hutment dwellers/occupants, under the provisions of Regulation 33 (10) of the Development Control Regulations, 1991, consented to the combined slum rehabilitation scheme for Saidarshan Gangadarshan Co-operative Housing Society (Proposed), on the terms and conditions stated therein.
15. By and under a Development Agreement dated 9th March, 2010 made between Gangadarshan Co-operative Housing Society (Proposed), through its office bearers, being the parties of the One Part and the Developer, therein also referred to as “the Developer” of the Other Part, Gangadarshan Co-operative Housing Society (Proposed) granted unto the Developer the right to construct building/s on the portion of the Larger Property occupied by its members (“**Gangadarshan Property**”), for their rehabilitation together with the right to sell the additional tenements on ‘ownership basis’, in the manner mentioned therein.
16. By and under an Irrevocable Power of Attorney dated 9th March, 2010, the office bearers of Gangadarshan Co-operative Housing Society (Proposed), granted various powers and authorities to the Developer, in the manner mentioned therein. A power to amalgamate the Gangadarshan Property with any other property or sub-divide the same was also given to the Developer under the aforesaid Power of Attorney.
17. Vide a Consent Letter dated 9th March, 2010 addressed by various hutment dwellers/occupants being members of the Gangadarshan Co-operative Housing Society (Proposed) to the Chief Executive Officer, Slum Rehabilitation Authority, the slum dwellers, under the provisions of Regulation 33 (10) of the Development Control Regulations, 1991, consented to the combined slum rehabilitation scheme for Saidarshan Gangadarshan Co-operative Housing Society (Proposed), on the terms and conditions stated therein.
18. The SRA issued a Letter of Intent dated 9th July, 2012 bearing No. SRA/ENG/1358/RS/MHL/LOI (“**New LOI**”) for the Slum Rehabilitation Scheme on all that piece and parcel of slum land and ground admeasuring 5610.70 sq. mts., forming part of the Larger Property under occupation of the members of Shree Sai Darshan Ganga Darshan Co-operative Housing Society (hereinafter referred to as “**the New LOI Property**”) on the terms and conditions more particularly specified therein.
19. One of the conditions specified in the Old LOI as well as the New LOI was that No-objection Certificate from the land-owning authority, i.e. MHADA would be obtained within one month of approval of the scheme.

20. Accordingly, the SRA addressed a letter dated 10th July, 2012 bearing No. SRA/ ENG/ 1358/ RS/ MHL/ LOI, to MHADA, seeking its No-objection Certificate (“**NOC**”) for building permission in respect of the New LOI Property. The said letter further states that if nothing is heard from MHADA within one month of the said letter, it would be deemed that the NOC has been granted to the Developer. The Developer has confirmed that there was no reply from MHADA to the said letter and hence the MHADA NOC is deemed to be issued in respect of the New LOI Property. We have been informed by the Developer that a similar letter was addressed by the Slum Rehabilitation Authority in respect of the Old LOI Property and therefore, the MHADA NOC is deemed to be issued in respect of the Old LOI Property as well.

21. On or about August, 2012, one M/s. Kenstro Island, claiming to be entitled to the development rights in respect of the New LOI Property, filed proceedings against the Developer and the Slum Rehabilitation Authority, which came up before the High Power Committee (“**HPC**”) constituted by the Government of Maharashtra to preside over issues arising in Slum Rehabilitation Schemes. In light of the same, the HPC set aside the New LOI dated 9th July, 2012. However, it appears that the said matter was subsequently settled between the Developer and M/s. Kenstro Island and by and under an Order dated 4th July, 2015, passed by the HPC, the said proceedings came to be dismissed as withdrawn.

22. Subsequently, on 27th December, 2015, the New LOI dated 9th July, 2012 bearing No. SRA/ENG/1358/RS/MHL/LOI came to be reinstated.

23. Some of the partners of the Developer had filed a Suit bearing No. 2398 of 2012 in the Hon’ble Bombay High Court, *inter alia* for a declaration of dissolution of the firm, rendition of accounts, for winding up the affairs of the firm, for payment of their share to them and other incidental and consequential reliefs as set out therein. However, the said Suit was amicably settled between the parties as recorded in Consent Terms dated 30th July, 2013, entered into between them. By an Order dated 31st July, 2013, the Hon’ble Bombay High Court disposed of the aforesaid Suit in terms of the aforesaid Consent Terms.

24. The Developer thereafter submitted an application for amalgamation of the Slum Rehabilitation Scheme in respect of the New LOI Property with the ongoing Slum Rehabilitation Scheme being carried out jointly by Shivam Megastructures and the Developer on the Old LOI Property.

25. The Slum Rehabilitation Authority has thereafter issued the amalgamated/ revised LOI dated 14th June, 2016, bearing No. SRA/ENG/1395/RS/MHL/LOI (“**the Revised LOI**”) for the said amalgamated slum rehabilitation schemes on the terms and conditions more particularly specified therein. The Revised LOI has been issued in respect of a portion of the Larger Property admeasuring 34,390.69

sq. mts, in the use and occupation of the members of the 8(Eight) societies referred to above, viz. (1) Shree Safalya Shejaar Samitee Co-operative Housing Society, (2) Shree Saikrupa Shejaar Samitee Co-operative Housing Society, (3) Sagar Shejaar Samitee Co-operative Housing Society, (4) Prabhat Co-operative Housing Society, (5) Dattakrupa Co-operative Housing Society, (6) Utkarsha Co-operative Housing Society. (7) Pathan Chawl Co-operative Housing Society and (8) Shree Sai Darshan Ganga Darshan Co-operative Housing Society, which property is more particularly described in the **Third Schedule** hereunder written and is hereinafter referred to as “**the said Property**”.

26. The Revised LOI has been issued in continuation of the New LOI dated 9th July, 2012, issued in respect of the New LOI Property and the Old LOI dated 18th May, 2009, issued in respect of the Old LOI Property. It is further stated that the terms and conditions of the said two LOIs dated 18th May, 2009 and 9th July, 2012 would continue to be applicable for the amalgamated scheme.

27. We have caused required searches to be taken from time to time in respect of the Larger Property in the offices of the concerned Sub-Registrar of Assurances at Mumbai for the period commencing from 1980 upto 2016. On a perusal of the Search Reports submitted to us, we have come across two Mortgage Deeds dated 22nd January, 2014 and 27th March, 2015, both executed by one Ruchi Priya Developers Limited in favour of IDBI Trusteeship Services Limited and India Infoline Finance Limited in respect of the free sale structure to be constructed by the said Ruchi Priya Developers Limited on a portion of the Larger Property bearing CTS No. 163-A. We have been informed that the said Mortgage Deeds do not pertain to the said Property, or any part thereof.

28. From the said Search Reports, we have also come across a Notice of Lis Pendens dated 22nd December, 2012 and bearing registration No. BOR-6-9465 of 2012 in respect of the Old LOI Property and Suit No. 2398 of 2012 then pending in the Hon’ble Bombay High Court. As stated above, pursuant to Order dated 31st July, 2013 passed in the above Suit, the same has already been disposed of in terms of the Consent Terms dated 30th July, 2013 entered into between the parties thereto. We have also been furnished with a photocopy of Declaration for Withdrawal of Lis Pendens dated 16th July, 2015, and registered with the Sub-registrar of Assurances at Borivili under Serial No. BRL-6 /5538 of 2015 executed by the concerned parties, withdrawing the said Lis Pendens.

29. Further, we have also come across a Deed of Mortgage dated 14th October, 2014 registered with the Sub-registrar of Assurances at Kurla under Serial No. KRL-1/ 9284 of 2014, as varied and modified by Supplemental Mortgage Deed dated 14th July, 2015, registered with the Sub-registrar of Assurances at Borivili under Serial No. BRL-6/ 6379 of 2016, read with further Supplemental Mortgage Deed dated 15th February, 2016, registered with the Sub-registrar of Assurances at

Kurla under Serial No. KRL-2 /1511 of 2016, read with Second Supplemental Mortgage Deed dated 10th February, 2017 registered with the Sub-registrar of Assurances at Kurla under Serial No. KRL-2 /1310 of 2017 (“**the said Mortgage**”), whereby Shivam Megastructures and the Developer *inter alia* charged and mortgaged all their right, title and interest in respect of the said Property, in favour of Yes Bank Ltd.

30. We have issued a Public Notice in The Free Press Journal and Navshakti (Marathi translation) both dated 5th May, 2016 inviting claims or objection in respect of the New LOI Property. We have not received any claims or objections in response to the said Public Notice.

31. As per the instructions of our client, Shivam Megastructures herein, we have not conducted searches or issued Public Notice in respect of the said Property, post May, 2016.

32. We have been furnished with a photocopy of the Property Register card dated 27th April, 2006, in respect of the Larger Property. Upon perusal of the said Property Register Card, it is observed that the Larger Property stands in the name of the Government of Maharashtra.

33. By a notarized Declaration of date, executed by Mr. Girish Chheda, in his capacity as Director of Shivam Megastructures and as partner of the Developer, it has been, *inter alia*, declared, that:

- a) the said Shivam Megastructures, has the responsibility to construct rehab building/s on the said Rehab Land and is fully entitled to develop the said Free sale Land and to sell/mortgage flats in the building/s constructed by it thereon, in accordance with the terms and conditions specified in the Agreement for Sub-development dated 29th October, 2010 and the Developer, i.e. M/s. Shivam Developers, is fully entitled to carry out the slum rehabilitation scheme on the remaining portion of the said Property and construct the sale building/s thereon in accordance with the terms and conditions specified in the Old LOI dated 18th May, 2009 and the New LOI dated 9th July, 2012, read with the Revised LOI dated 14th June, 2016 and the permissions and approvals issued by the concerned authorities, from time to time and to sell, transfer or mortgage flats in such sale building/s to third parties;
- b) the development rights of the Developer in respect of the said Property are not rescinded and/or challenged by any of the aforesaid slum societies or any members thereof;

- c) save and except the said Mortgage, neither Shivam Megastructures nor the Developer nor any of its partners have created any lien, charge, mortgage or encumbrance on the said Property, or any part thereof;
- d) the said Property is not the subject matter of any pending dispute, litigation, proceedings or attachment either before or after the judgment nor is there any restraining order or injunction passed by any court, authority, tribunal or forum pertaining to the said Property or any part thereof;
- e) Shivam Megastructures is not restrained, prevented or prohibited by any order or direction or injunction of any court, forum, tribunal or authority from selling, transferring, mortgaging or creating third party rights in respect of the said Property; and
- f) no Notice of Attachment/Reservation of the said Property or any part thereof has been served upon Shivam Megastructures, the Developer or upon any of its partners.

34. It may be noted that:

- (a) we have not visited/ inspected the said Property or any part thereof;
- (b) the aspects of zoning, permitted user, reservation/set-back (if any), development potential/ Floor Space Index and developability of the said Property fall within the scope of an architect review and we express no views about the same;
- (c) We have been informed that the original documents of title are in the custody of Yes Bank Limited in pursuance of the said Mortgage and therefore we have not been provided inspection of the same;
- (d) At the instructions of our client, Shivam Megastructures, for the purpose of this Opinion on Title:
 - (i) We have not carried out searches with the Registrar of Companies in respect of any charges created by Shivam Megastructures in respect of the Property;
 - (ii) Since our previous Public Notice, issued on 5th May, 2016, we have not issued any fresh Public Notices in newspapers for the purpose of this Opinion on Title;

(iii) Since 3rd May, 2016, we have not carried out searches in the office of the sub-registrar of Assurances in respect of the said Property;

(e) the following has been assumed by us —

(i) Copies of documents/papers provided to us are precise and genuine copies of originals;

(ii) Each document/paper has been signed/ executed by persons purporting to sign/ execute the same and such person has full authority and power to do so; and in no circumstances, shall the cumulative liability, if any, of our firm viz., Messrs. Kanga & Co., Advocates & Solicitors, its Partners, Associates or employees, in connection with the preparation or the issue of this Report on Title, exceed the professional fees paid by our client, Shivam Megastructures, to us in that behalf.

35. On the basis of and subject to the above, and in particular, subject to the said Mortgage, in our opinion, M/s. Shivam Developers are entitled to develop the said Property as part of the slum rehabilitation scheme sanctioned by the SRA vide the Revised LOI dated 14th June, 2016 and in accordance with the terms and conditions specified therein; and the said rights of and M/s. Shivam Developers, are clear and marketable.

36. Further, on the basis of and subject to the above, and in particular, subject to the said Mortgage, in our opinion, pursuant to the aforesaid Agreement for Sub-Development dated 29th October, 2010, Shivam Megastructures Private Limited is entitled to (i) the development rights in respect of the said Free sale Land (as described in the Second Schedule hereunder written); and (ii) the right to sell and transfer units in the buildings constructed under the free sale component of the proposed slum rehabilitation project to be undertaken on the said Free sale Land, subject to the terms and conditions as specified in the said Agreement and further subject to the terms and conditions of the Old LOI dated 18th May, 2009 read with the Revised LOI dated 14th June, 2016, issued by SRA in favour of M/s. Shivam Developers.

THE FIRST SCHEDULE ABOVE REFERRED TO
(Description of the Larger Property)

All that piece and parcel of Government land and ground admeasuring 6,07,898.9 square metres (as per P.R. Card), and bearing CTS No. 163/A, of

Village Akurli, Taluka Borivali, within the registration district and sub-district of Mumbai City and Mumbai Suburban.

THE SECOND SCHEDULE ABOVE REFERRED TO
(Description of the said Free sale Land)

All that piece or parcel of slum land admeasuring 7,708.50 sq. mts. forming part of the Larger Property described in the First Schedule above, and bounded as follows:

On or towards the North & South :	By land bearing C.T.S. No. 163 A (pt.) of village Akurli;
On or towards the East:	By land bearing C.T.S No. 191 of village Akurli in r-ward adjoining open plot abutting existing 18.30 mt. wide D.P. road, next to Lokhandwala complex; and
On or towards the West:	By internal access road (D P Road).

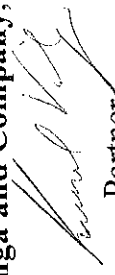
THE THIRD SCHEDULE ABOVE REFERRED TO
(Description of the said Property)

All that piece and parcel of slum land and ground admeasuring 34,390.69 sq. mts., being on part of the Larger Property, described in the First Schedule above, and bounded as follows:-

On or towards the North:	By C.T.S. No. 163 A (pt.) of village Akurli in r-south ward adjoining slum pocket commonly known as Hanuman Nagar;
On or towards the South:	By C.T.S No. 163 A (pt.) of village Akurli in r-south ward adj. existing 12.00 mt. road junction;
On or towards the East:	By C.T.S No. 191 of village Akurli in r-ward adjoining open plot abutting existing 18.30 mt. wide D.P. road, next to Lokhandwala complex; and

On or towards the West:

By C.T.S No. 163A (pt.) of village Akruhi r-
south ward adjoining slum pocket commonly
known as Hanuman Nagar across existing nalla
abutting the Property.

Yours faithfully,
Kanga and Company,

Partner.